United States Court of Appeals

for the Second Circuit

AMICUS BRIEF

77-7104

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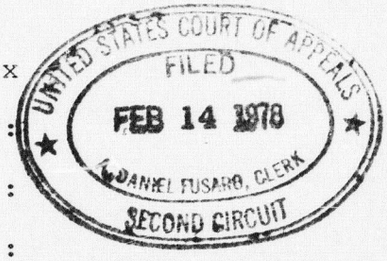
FOR THE SECOND CIRCUIT



DAVID E. ROLF,

Plaintiff-Appellant-Cross-Appellee,

v.

BLYTH, EASTMAN DILLON & CO., INC., and MICHAEL STOTT,

Defendants-Appellees-Cross-Appellants.

Docket Nos. 77-7104
77-7124

AMICUS CURIAE BRIEF OF NEW YORK STOCK EXCHANGE, INC. IN SUPPORT OF PETITION FOR REHEARING WITH SUGGESTION FOR REHEARING IN BANC

MILBANK, TWEED, HADLEY & McCLOY
1 CHASE MANHATTAN PLAZA
NEW YORK, N. Y. 10005

212 422 2660

Attorneys for New York Stock Exchange, Inc.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

DAVID E. ROLF,	:	
Plaintiff-Appellant-Cross-Appellee,	:	
v.	:	Docket Nos. 77-7104 77-7124
BLYTH, EASTMAN DILLON & CO., INC., and MICHAEL STOTT,	:	
Defendants-Appellees-Cross-Appellants.	:	

AMICUS CURIAE BRIEF OF NEW YORK STOCK EXCHANGE, INC. IN SUPPORT OF PETITION FOR REHEARING WITH SUGGESTION FOR REHEARING IN BANC

New York Stock Exchange, Inc. (the "Exchange") is and has been since October 1, 1934 registered as a national securities exchange with the Securities and Exchange Commission pursuant to Section 6 of the Securities Exchange Act of 1934. The Exchange has 1,366 members, many of whom are associated with 483 organizations (either partnerships or corporations, called "member organizations") engaged in the securities business. Under Section 6 of the Exchange Act, the Exchange has certain supervisory responsibilities with respect to its

member organizations and certain of their employees, including sales and investment advisory employees.

The panel decision decided January 3, 1978 (Smith and Oakes, C.J.'s) decides issues concerning the applicable standards in this circuit for Rule 10b-5 principal and aider and abettor liability relating to brokerage firms and their sales and investment advisory employees. The dissent (Mansfield, C.J.) strongly argues that the panel decision is contrary to the governing Supreme Court precedent of Ernst & Ernst v. Hochfelder, 425 U.S. 185 (1976), because the panel decision finds: 1) fraud on the part of an independent investment adviser as a result of his investment of a portion of a customer's account in unsuitable low-quality securities on which the customer realized a loss, and 2) finds aiding and abetting liability on the part of a registered representative whose role was equal to that of a custodian of the investment account who assurred the investor of the investment adviser's expertise, which was, at the time, well recognized in the securities industry.

These issues are of exceptional importance to the Exchange in fulfilling its supervisory duties under the Exchange Act, to the member organizations of the Exchange, to their sales and investment advisory employees, and to all

broker-dealers. These issues should be considered by the entire court. See Lanza v. Drexel Co., 479 F.2d 1277 (2d Cir. 1973) (in banc).

Respectfully submitted,

MILBANK, TWEED, HADLEY & McCLOY

By Russell E. Brooks

(A Member of the Firm)
1 Chase Manhattan Plaza
New York, New York 10005
Attorneys for New York Stock Exchange, Inc.

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